

Key Decision Required:	No	In the Forward Plan:	No
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CABINET

15 JUNE 2011

REFERENCE FROM PLANNING COMMITTEE

A.4 MANNINGTREE AND MISTLEY CONSERVATION AREA MANAGEMENT PLAN (CAMP) - JUDICIAL REVIEW

(Report prepared by Philip Hornby and Graham Thomas)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

Planning Committee at their 19 April 2011 resolved “*That the Committee consider it would be helpful and appropriate for the Cabinet to reconsider the adoption of the Mistley and Manningtree CAMP*” in the light of the original objections submitted by TWL back in February 2010, their letter dated 19 April 2011 and their claim seeking Judicial Review of the decision of the Planning Portfolio Holder made on 17 August 2010

EXECUTIVE SUMMARY

Members will be aware that the Council has a programme of preparing Conservation Area Management Plans (CAMP) working in partnership with Town and Parish Councils for the twenty conservation areas within the district. To date six have been formally adopted and a further one is in the course of preparation during 2011. Further CAMPs are planned for future years as resources become available and the opportunity arises.

The Manningtree and Mistley CAMP was prepared and adopted in August 2010 following a consultation exercise that had undergone a proper process. The decision to adopt this CAMP was made on the 17th August 2010 by Councillor Guglielmi, the Planning Portfolio Holder, in accordance with the Council’s constitution and procedures. A copy of the adopted Manningtree and Mistley CAMP can be found on the Councils website through the following web link <http://www.tendringdc.gov.uk/NR/ronlyres/E2CC4D5E-71C4-4C64-87E2-A2A9BD410758/9328/MistleyManningtreeCAMPDraft6July2010.pdf>

The decision to adopt this CAMP has been challenged by T W Logistics Limited (TWL), the Mistley Quay port operator, in the High Court by way of judicial review proceedings. On 19 April 2011 the Planning Committee considered a report on this matter in view of the points raised by TWL in their Judicial Review process. The Planning Committee in their reconsideration of the original submission made by TWL recommended:

- (a) That the contents of item A.3 of the report of the Temporary Head of Planning, and incorporating the amendments detailed on the update sheet be noted.
- (b) That the Committee agree with the officers’ response comprising Appendix B to the above mentioned report.
- (c) That the Committee consider it would be helpful and appropriate for the Cabinet to reconsider the adoption of the Mistley and Manningtree CAMP.

RECOMMENDATION(S)

That the Cabinet consider TWL's objections and comments and thereafter re-affirms the decision of the Planning Portfolio Holder made on 17 August 2010 to formally adopt the Manningtree and Mistley CAMP.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The enhancement of the Manningtree and Mistley Conservation Area reflects the priority to improve the local environment which is included in the Community Strategy and the Council's Corporate Plan. Completion of the Manningtree and Mistley CAMP was also an identified priority within the Councils 2010/11 Corporate Plan.

FINANCE, OTHER RESOURCES AND RISK

The Manningtree and Mistley CAMP was jointly funded by Manningtree Town and Mistley Parish Councils. There are no further financial implications involved in adopting the Plan. Whilst Counsel has advised that there is every reason to believe that TWL's Judicial Review claim will be unsuccessful if the Council were for any reason to lose the case then it would have to pay the legal and court costs of both parties which could be in the order of £40,000 to £50,000, of which £20,000 was set aside in 2010/11 and is requested to be carried forward as a financial commitment into 2011/12. The Council is taking all reasonable steps to work with TWL in order to address their concerns including reconsideration of their objections to the CAMP.

LEGAL

It is proposed to adopt the Management Plan under the provisions of Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The adoption will continue unless the court quashes the Portfolio Holder decision to adopt the CAMP.

OTHER IMPLICATIONS

There is no direct link between the adoption of the Management Plan and crime and disorder. However, the various proposals aimed at enhancing the Conservation Area and the settlements of Manningtree and Mistley generally may contribute towards a reduction in crime and disorder locally. Any proposals involving environmental enhancement works will need to take into account the needs of the disabled and those with mobility/sensory impairments.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

1.1 TWL in their claim for judicial review essentially contend that the decision to adopt the Mistley and Manningtree CAMP was unlawful for five reasons which can very briefly be summarised as follows:-

- (a) The CAMP is inconsistent with policies in the Tendring District Local Plan (2007), particularly Policy LMM1.
- (b) The Council have failed to either properly understand or take into account their objections or to provide a rational response to their objection.
- (c) The Council through its Officers led TWL to believe that they would be re-consulted prior to adoption.
- (d) The Council should have prepared the CAMP in tandem with the supplementary planning document (SPD) for Mistley.
- (e) That it was wrong for Councillor Guglielimi, the Portfolio Holder, to make the decision to adopt as he had been a long-standing opponent of port uses and as a consequence there was a real risk of a perception of bias or him having pre-determined the decision.

1.2 Your officers have instructed solicitors and Counsel following receipt of the Court papers for judicial review. It is believed that the Council has good grounds for opposing each and every claim made. The necessary papers have therefore already been filed with the High Court. However, notwithstanding the firm belief that TWL's claim will be unsuccessful, it is considered in all the circumstances expedient for the Cabinet to be appraised of the current situation and to look again for the avoidance of doubt at the grounds of challenge identified as grounds (b), (c) and (e) above. This is on a strictly without prejudice basis.

1.3 The purpose of this report is to afford the Cabinet the opportunity to look again at the issues raised by TWL and the officers' response to these when they re-consider the decision of the Planning Portfolio Holder to adopt the Manningtree and Mistley CAMP made on 17 August 2010. It should be noted that this further review is only being given to the TWL responses accepting that a number of other individuals and organisations also raised issues which were taken into account in the revised CAMP adopted in August 2010.

2.0 Failure to properly consult

2.1 A draft of the proposed Manningtree and Mistley CAMP was published for consultation purposes on 19 January 2010. A press release was issued and all the documentation (including the questionnaire) was posted on the Council's Website. In addition, an exhibition of the CAMP was mounted in Manningtree Library and later at Manningtree Methodist Church. Your officers and the consultant appointed to prepare this work (The Conservation Studio) were in attendance on two separate occasions at those venues. The public were requested to express their views either by completing a questionnaire or in writing by no later than 16 February 2010. TWL duly responded by letter dated 16 February 2010 which was sent to The Conservation Studio and a copy of that letter is attached at Appendix A.

2.2 Members are now requested to look at the entire representation but in summary TWL's observations are submitted under the following headings:-

1. The Industrial Character of the West Quay
2. Buildings that detract from the character of the area: Recommendation 9
3. As to Paragraph 7.8: Key Projects
4. Open Spaces: Recommendation 11
5. Opportunities for Enhancement/Purple Wash: Paragraph 6.53
6. Boundary Treatments: Recommendations 16 and 17, Purple Wash
7. Traffic Management and Parking: Recommendation 21
8. Policy and Guidance
9. Boundary review
10. Article 4 Direction: Recommendations 5-7

2.3 The Council's consultant prepared a response to this and other objections which was made available to the Planning Portfolio Holder *prior to formal adoption with the Officer Report*. A more detailed appraisal of TWL's representations has now been prepared. This is set out in Appendix B to this report. In summary, the Officers' views expand upon the original summary responses prepared by the consultant and cover all of the ten points made above. A detailed explanation of these issues was provided in a presentation to the Planning Committee on 19 April 2011.

2.4 It is not the case that Officers have either failed to consider this objection, or to properly understand it. It is considered that they have provided a meaningful response. The

Cabinet is asked to re-affirm the Councils position.

3.0 Failure to re-consult

3.1 The Conservation Studio met with representatives of TWL during the preparation of the CAMP. No further meetings were held with TWL, or indeed any other party, to discuss the CAMP prior to its formal adoption. Officers reject any assertion that they gave a commitment to continue with consultations indefinitely in any way whatsoever.

3.2 However, with a view to ensuring that all TWL's objections and comments are properly considered, they were notified of officers' intentions to refer this matter to the Planning Committee on 19 April 2011 and subsequently Cabinet to reconsider. TWL were invited to make further representations. TWL submitted representations were not received in time to be reported to the Planning Committee on 19 April 2011. Appendix C sets out those further representations from TWL which have been considered and they do not change the position.

4.0 Bias/Pre-determination

4.1 TWL essentially claim that the decision to adopt the CAMP should not have been taken by the Planning Portfolio Holder, Councillor Guglielmi, as he had been a long-standing opponent of port uses in this area and as a consequence therefore there was a real risk of either a perception of bias or him having pre-determined matters. Councillor Guglielmi was provided with a detailed report from Officers, which included reference to the various objections prior to him making the decision to adopt the CAMP. Further, he considered the matter on an objective basis and totally denies any suggestions of bias or pre-determination. If necessary, therefore, this element of the claim will be strongly contested at any further Court hearing.

4.2 Whilst Officers firmly believe that Councillor Guglielmi reached his decision on an objective basis, nevertheless officers have been advised that it would be expedient for the Cabinet to re-consider matters.

5.0 Decision Making Procedure

5.1 Under the Council constitution a portfolio holder may elect to refer up to Cabinet the exercise of any power delegated to that portfolio holder. It is therefore right and proper that it is the Cabinet that should be asked to reaffirm the decision of the Planning Portfolio Holder to adopt the Manningtree and Mistley Conservation Plan made on 17 August 2010.

5.2 It was however considered appropriate that the views of the Planning Committee should be available to Cabinet when they consider the matter.

CURRENT POSITION

The Planning Committee considered a Report on the matter at their meeting on 19 April 2011, when it was resolved:

(a) That the contents of item A.3 of the report of the Temporary Head of Planning, and incorporating the amendments detailed on the update sheet be noted.

(b) That the Committee agree with the officers' response comprising Appendix B to the abovementioned report.

(c) That the Committee consider it would be helpful and appropriate for the Cabinet to reconsider the adoption of the Mistley and Manningtree CAMP.

Since the above Committee meeting TWL have submitted further representations letter. These are reproduced as Appendix C and Appendix D then contains Officer's Response.

The Planning Portfolio Holder has referred this matter to Cabinet requesting that the decision of the Planning Portfolio Holder to adopt the CAMP in August 2010, taking into account the views of the Planning Committee and also in the light of the further representations received on 20 April 2011 be looked at again.

BACKGROUND PAPERS FOR THE DECISION

Manningtree and Mistley Conservation Area Management Plan Draft January 2010

Manningtree and Mistley Conservation Area Management Plan Final version July 2010

TWL's Claim for Judicial Review letter - 1 November 2010

Planning Committee Report and update sheet 19 April 2011

APPENDICES

Appendix A TWL's Response to draft CAMP 16/2/10

Appendix B Officer's Response to TWL's representations on Draft CAMP

Appendix C Further representations from TWL received on 20/4/11